

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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EMPLOYERS MUTUAL CASUALTY)
COMPANY, an insurance company)
incorporated in the State of Iowa;)

Plaintiff,)

V.)

ARNBERG & ALLEN CONSTRUCTION,)
L.L.C.; STEPHEN D. ARNBERG,)
JIM ALLEN, MICHAEL O. LUNSFORD)
and DEBRA O. LUNSFORD.)

Defendants.)

CIVIL ACTION NUMBER

CV 2:05 cv 1108-B

COMPLAINT

PARTIES AND JURISDICTIONAL ALLEGATIONS

1. Plaintiff Employers Mutual Casualty Company ("EMCC") is an insurance company incorporated and organized under the laws of the State of Iowa, having its principal place of business in the State of Iowa.

2. Defendant Arnberg & Allen Construction, LLC is believed to be an Alabama limited liability company doing business in Alabama at all times material to this matter.

3. Defendant Stephen D. Arnberg is an individual who is believed to be an Alabama citizen and is over the age of nineteen (19) years old.

4. Defendant Jim Allen is an individual who is believed to be an Alabama citizen and is over the age of nineteen (19) years old.

5. Defendant Michael O. Lunsford is an individual who is believed to be an Alabama citizen and is over the age of nineteen (19) years old.

6. Defendant Debra O. Lunsford is an individual who is believed to be an Alabama citizen and is over the age of nineteen (19) years old.

7. Defendants Arnberg & Allen Construction, LLC, Stephen D. Arnberg and Jim Allen are defendants in an underlying matter pending in the Elmore County Circuit Court, Clayton Division styled, *Michael O. Lunsford and Debra O. Lunsford v. Arnberg & Allen Construction, LLC., et. al.*, CV 05-302(“the underlying action”). Defendants Michael O. Lunsford and Debra O. Lunsford are plaintiffs in the underlying action.

8. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00. The underlying case arises out of the construction of the Lunsfords’ residence. (See the underlying complaint attached as Exhibit A).

9. The underlying complaint generally asserts that on or about February 13, 1999 the Lunsfords entered into a contract with Arnberg & Allen Construction, LLC for the construction of a personal residence located at Lot 3, Walnut Point Plat 3, Emerald Mountain in Wetumpka, Alabama. (See the underlying complaint attached as Exhibit A).

10. According to the underlying complaint, the contract reflected that the Lunsfords paid \$364,481 for the construction of the residence which was completed on February 18, 2000. (See the underlying complaint attached as Exhibit A).

11. According to the underlying complaint, on or about March 2000 the Lunsfords noticed cracking on the porch surface. In December 2000 there was cracking around some of the windows. Later in 2000 additional cracking occurred in the joints of the brick veneer. (See the underlying complaint attached as Exhibit A).

12. In the underlying action, the Lunsfords are seeking compensatory damages, emotional distress damages, attorney fees and costs of court. (See the underlying complaint attached as Exhibit A).

13. Although the underlying complaint does not contain an ad damnum clause, the nature of the claims and allegations of damages, including punitive damages, demonstrate that the underlying plaintiff is claiming more than \$75,000.00 against the underlying defendants. As such, jurisdiction is predicated on diversity of citizenship and the amount in controversy, 28 U.S.C. §1332 and on the Federal Declaratory Judgment Act, 28 U.S.C. §2201.

UNDERLYING LAWSUIT

14. The underlying plaintiffs filed their complaint against Arnberg & Allen Construction, LLC, Stephen D. Arnberg and Jim Allen on or about June 24, 2005 in the Circuit Court of Elmore County, Alabama, Clayton Division and numbered CV

05-302. (A copy of the complaint is attached as Exhibit A.)

15. The complaint in the underlying action asserts the following causes of action against Arnberg & Allen Construction, LLC, Stephen D. Arnberg and Jim Allen:

1. Negligence;
 2. Fraud;
 3. Breach of Contract;
 4. Breach of Express Warranty; and
 5. Breach of Implied Warranty of Habitability.
- (See the underlying complaint attached as Exhibit A).

POLICY PROVISIONS

16. EMCC issued Commercial General Liability Policy Number 2D0-72-42-00 to Arnberg and Allen Construction, LLC with effective policy dates of July 22, 1999 through January 1, 2000. This Policy was renewed with effective dates of January 1, 2000 through January 1, 2003. (hereinafter "the Policy"). A true and correct copy of the Policy from effective dates July 22, 1999 through January 1, 2003 is attached to this Complaint as Exhibit B, and the provisions of the Policy are adopted and incorporated herein by reference.

17. EMCC issued Umbrella Policy Number 2J0-72-42-00 to Arnberg and Allen Construction, LLC with effective policy dates of January 24, 2002 through January 1, 2003. (hereinafter "the Umbrella Policy"). A true and correct copy of the Policy from effective dates January 24, 2002 to January 1, 2003 is attached to this

Complaint as Exhibit C, and the provisions of the Policy are adopted and incorporated herein by reference.

18. Defendants Arnberg & Allen Construction, LLC, Stephen D. Arnberg and/or Jim Allen are not entitled to coverage under the Commercial General Liability Policy for the claims asserted against them in the underlying action based on, among other policy provisions, the following: (1) the definition of “insured”; (2) the insuring agreement; (3) the definition of “bodily injury”; (4) the definition of “property damage”; (5) the definition of “occurrence”; (6) exclusion 2m damage to impaired property or property not physically injured; (7) exclusion 2j for damage to property; (8) exclusion 2l for damage to “your work”; (9) exclusion 2a expected or intended injury; (10) endorsement excluding injury or damage from earth movement; (11) late notice; (12) the policy period; and (13) other policy provisions.

19. Defendants Arnberg & Allen Construction, LLC, Stephen D. Arnberg and/or Jim Allen are not entitled to coverage under the Umbrella Policy for the claims asserted against them in the underlying action based on, among other policy provisions, the following: (1) the policy period; (2) the definition of “insured”; (3) the insuring agreement; (4) the definition of “bodily injury”; (5) the definition of “property damage”; (6) the definition of “occurrence”; (7) endorsement excluding coverage for known injury or damage for “bodily injury” and/or “property damage” which commences prior to inception of the policy; (8) exclusion 7, “property damage”

to your product, work, impaired property; (9) exclusion 6, "property damage" – general (10) endorsement excluding injury or damage from earth movement; (11) late notice; and (12) other policy provisions.

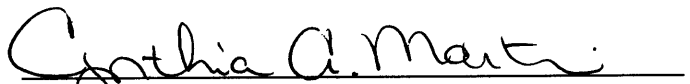
20. There is a justiciable controversy which requires the court to declare the rights, remedies, obligations and liabilities of the parties under the Policies.

REQUESTED RELIEF

Wherefore, premises considered, EMCC requests the court to grant the following relief:

A. Declare that EMCC does not have a duty to defend and/or indemnify Arnberg & Allen Construction, LLC, Stephen D. Arnberg and/or Jim Allen for any and all of the claims asserted against them in the underlying action, and that accordingly EMCC is not required to satisfy any settlement or judgment entered against Arnberg & Allen Construction, LLC, Stephen D. Arnberg and/or Jim Allen in the underlying action; and

B. Grant EMCC such other, further or different relief to which it may be entitled.


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PLEASE SERVE DEFENDANTS BY CERTIFIED MAIL AT:

Arnberg & Allen Construction, LLC,
55 Emerald Mountain Expressway
Wetumpka, Alabama 36093

Stephen D. Arnberg
9790 Highway 63 South
Alexander City, Alabama 35010

Jim Allen
779 Peace Church Road
Wetumpka, Alabama 36093

Michael O. Lunsford
750 Emerald Mountain Parkway
Wetumpka, Alabama 36093

Debra O. Lunsford
750 Emerald Mountain Parkway
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